

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

To:

see form PCT/ISA/220

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/US2004/022741

International filing date (day/month/year)
16.07.2004

Priority date (day/month/year)
24.07.2003

International Patent Classification (IPC) or both national classification and IPC
B01F3/10

Applicant
FLUID MANAGEMENT, INC.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

DOCKETED: 5/24/05

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



European Patent Office
D-80298 Munich
Tel. +49 89 2399 - 0 Tx: 523656 epmu d
Fax: +49 89 2399 - 4465

Authorized Officer

Muller, G

Telephone No. +49 89 2399-2331



**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2004/022741

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2004/022741

Box No. II Priority

1. ☒ The following document has not been furnished:

☒ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).

☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. ☐ It has not been possible to consider the validity of the priority claim because a copy of the priority document was not available to the ISA at the time that the search was conducted (Rule 17.1). This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

4. Additional observations, if necessary:

Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	2-17
	No: Claims	1
Inventive step (IS)	Yes: Claims	
	No: Claims	1-17
Industrial applicability (IA)	Yes: Claims	1-17
	No: Claims	

2. Citations and explanations

see separate sheet

Re Item V.

The following documents are referred to in this communication:

- D1 : WO 02/15735 A (Unilever PLC ; Lever Hindustan LTD (IN); Unilever NV (NL)) 2002-02-28
- D2 : US 2002/179639 A1 (Bartholomew Julie R ET AL) 5 December 2002 (2002-12-05)
- D3: EP-A-1 145 704 (SHISEIDO CO LTD) 17 October 2001 (2001-10-17)
- D4: US 2003/107949 A1 (MACDONALD JAMES E ET AL) 12 June 2003 (2003-06-12)
- D5: EP-A-1 123 732 (EDEL S R L) 16 August 2001 (2001-08-16)

- 1** The application contains more than one independent claim per category, namely claims 1,7,10 and 13. The aforementioned claims therefore lack conciseness, as required under Art. 6 PCT. Moreover, lack of clarity as a whole arises, since the plurality of independent claims makes it difficult, if not impossible, to determine the matter for which protection is sought and places an undue burden on others seeking to establish the extent of the protection. In order to fulfil the clarity requirement of Art. 6 PCT, the application should contain only one independent claim per category.

2 INDEPENDENT CLAIM 1

- 2.1** The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1 is not new in the sense of Article 33(2) PCT.

Document D1 discloses (the references in parenthesis applying to this document): a method of mixing a cosmetic preparation at a point of sale (see abstract), comprising: providing a container, adding a first base suspension (page 4, lines 7-8), adding one or more suspensions comprising one or more colorants on top of the first base suspension (page 4, lines 9-10, it is noted that the performance agent can be a colorant, see page 8, lines 18-19), adding a second base suspension on top of the one or more suspensions comprising one or more colorants (page 4, lines 19-24, noting that the second class of performance agents, or the second vehicle in which they are delivered is considered as the second base suspension), closing the top of the container and mixing (page 5, lines 5-6).

- 2.2** Independent claims 7, 10 and 13 contain additional features which are either already known from D1, or disclosed in D2 or D3, as for the use of talc or titanium dioxide in the first and second base suspension. These claims either lack novelty or at least lack an inventive step.

**WRITTEN OPINION OF THE
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AUTHORITY (SEPARATE SHEET)**

International application No.

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- 3** Dependent claims 2-6,8,9,11,12,14-17 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step, the reasons being as follows: as stated before, the use of titanium dioxide is known in the art for this kind of compositions, and documents D4 and D5 disclose respectively a rotary mixer that rotates the container about two different but intersecting axes (claims 6,9,12 and 17) and a gyroscopic mixer (claims 5,8,11 and 16).
- 4** The features of the claims are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).
- 5** Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the documents D1-D5 is not mentioned in the description, nor are these documents identified therein.